

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 854 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BABU NATHU YADAV @ BABU DADHI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL ,Advocate for the Petitioner.

MR.U.R.BHATT,AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 01/07/96

ORAL JUDGEMENT

Petitioner Babu Nathu Yadav @ Babu Dadhi (hereinafter referred to as "the detenu"), by way of this petition under Article 226 of the Constitution of India, has challenged the order of detention dated 30-12-1995 passed by the Commissioner of Police, Surat City, (hereinafter referred to as "the detaining authority")

under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as " the PASA Act").

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on three cases registered against him under the provisions of the Bombay Prohibition Act. and the statements of three witnesses for the alleged incidents of 29-10-1995, 13-11-1995 and 3-12-1995 wherein the witnesses have narrated the incidents of beating by the detenu and his associates with deadly weapons. Considering the three prohibition cases of 1995 registered against the detenu and the statements regarding the illegal and naferious activities of the detenu, the detaining authority was of the view that the detenu is a "bootlegger " within the meaning of section 2 (b) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

It is not necessary to deal with number of contentions advanced by Mrs.Patel learned Advocate on behalf of the detenu as this petition is capable of being disposed of on the first contention regarding non-disclosure of the identity of the witnesses to the detenu claiming privilege under section 9(2) of the PASA Act and the subjective satisfaction for the same recorded by the detaining authority. Mrs. Patel contended that the privilege claimed by the detaining authority under section 9(2) of the PASA Act for not disclosing the names of the witnesses to the detenu is not genuine. She contended that in the grounds of detention supplied to the detenu, the detaining authority has, on the one hand, claimed privilege under section 9 (2) and at the same time has in fact given material particulars as regards the identity of the witnesses. On this ground, therefore, the the impugned order of detention is illegal and void.

On reading the three statements of the witnesses, it is clear that the Police Inspector, Limbayat Police Station, Surat, who had recorded the statements of the witnesses , has kept certain blanks pertaining to the identity of the witness. However, the detaining authority has, in the grounds of detention, given all those details as to the the time, the place of incident, the verbatim talks which had taken place with the associate of the detenu , the exact reply given by the

witness to him , the vehicle involved, and thereafter the detenu coming with his associates to the place of the witness, telling him to transport the liquor and on refusal by the witness there was beating by by the detenu and his associates to the witness. People gathered , vehicular traffic stopped, people started running about and ultimately when the witness acceded to the demand of transporting the liquor, he was allowed to go. All these details would certainly disclose the identity of the witness to the detenu. In view of this, the privilege claimed by the detaining authority for not disclosing the identity of the witness to the detenu under section 9 (2) of the PASA Act, in my opinion, is not genuine and the detaining has exercised the said power of claiming privilege mechanically , and consequently, therefore, the subjective satisfaction arrived at by the detaining authority has become illegal violating the fundamental right of the detenu guaranteed under Article 22 (5) of the Constitution of India.

In the result, this petition is allowed. The impugned order of detention dated 30-12-1995 is quashed and set aside. The detenu Babu Naththu Yadav @ Babu Dadhi is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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